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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ream *et al.*

Art Unit: 1649

Application No.: 09/434,837

CERTIFICATE OF FACSIMILE

Filed: November 4, 1999

I hereby certify that this correspondence and any documents referred to as being transmitted herewith are being facsimile transmitted to the Patent and Trademark Office via 703-308-6916 on December 31, 2001.

For: PLANTS HAVING ENHANCED
RESISTANCE TO GALL AND
METHODS AND COMPOSITIONS FOR
PRODUCING SAMETanya M. Harding, Ph.D.
Attorney for Applicant

Examiner: Not assigned

Date: December 31, 2001

FAX RECEIVED

DEC 31 2001

COMMISSIONER FOR PATENTS
Washington, DC 20231

PETITIONS OFFICE

LETTER

On December 21, 2001, Applicants were requested by the Petitions Office of the United States Patent and Trademark Office (PTO) to provide a letter explaining the circumstances and timing surrounding the request for Withdrawal of Abandonment filed on April 30, 2001. This letter is provided in an attempt to explain these circumstances. If further information is required, please contact the undersigned.

This application was filed November 4, 1999, and a subsequent Notice of Missing Parts was mailed on December 2, 1999. A complete Response to the Missing Parts Notice was filed on January 31, 2000, accompanied by the appropriate late fee for late submission of the signed Declaration. A postcard was received from the PTO, acknowledging receipt of all of the documents submitted in the Response. Unfortunately, it appears that the executed Declaration was mistakenly separated from the Response within the PTO and sent to the Assignments Division, where it was recorded as though part of the Assignment at Reel 010520, Frames 0754-0760 and 0785-0788. Applicants had no way of knowing this at the time.

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Applicants' representatives received a first Filing Receipt for this application on December 3, 1999. To correct typographical errors in that Filing Receipt, a Request for correction was filed February 1, 2000. This resulted in issuance of a Corrected Filing Receipt, which was received on February 28, 2000.

Applicants' representatives received two additional (essentially identical¹) Corrected Filing Receipts on March 13, 2000; these two Corrected Filing Receipts reflected receipt of the fee for late submission of the signed Declaration. Applicants' representatives, in accordance with standard procedures, took issuance of these Corrected Filing Receipts as acknowledgement from the PTO that the Response to the Notice of Missing Parts had been timely received.

Applicants' representatives are accustomed to relatively long delays during prosecution of applications in the PTO; thus, procedures set up to monitor progress of an application provide for following up within one year of an action, where the next action is required to be on the part of the PTO. In accordance with this procedure, on February 6, 2001, attempts were made by Applicants' representatives to contact the Office of Initial Patent Examination to find out the status of this application. The voice mailbox for OIPE was full and no messages could be left. Applicants' representative next contacted Lynette Smith from (former) Art Unit 1649 (which was listed on the Filing Receipts for this application). Ms. Smith stated that Art Unit 1649 had been dissolved, and that the only way to discover the status of the application was to contact OIPE directly.

On March 2, 2001, Applicants' representatives again contacted OIPE regarding the status of this case, and were informed that it was scheduled to be abandoned due to an alleged failure to respond to the Notice of Missing Parts dated December 2, 1999. As stated above, a response to the Notice had been timely filed on January 31, 2000. OIPE said that no date of abandonment had been entered in the PTO system, but that the application was going to abandonment "right

¹ The only apparent difference between these two Corrected Filing Receipts is the time of printing at the PTO; one is marked as "3/7/00 12:27 PM" and the other as "3/7/00 12:34 PM."

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now." Applicants therefore continued to away some formal action by the PTO. Nothing was received.

On April 17, 2001, Applicants' representatives again contacted OIPE, to follow up on the status of the application, and were told that the case had not yet been abandoned. We were told to contact Doshie Day, who handles abandonment directly. We attempted to contact Ms. Day at 703-308-3640; there was no answer, her voice mailbox was full and no messages could be left.

On April 25, 2001, Applicants' representatives mailed a Petition for Withdrawal of Abandonment, in anticipation of an eventual holding that the application had been abandoned. The Petition was filed even though no Notice of Abandonment or other PTO action had been received. The Petition included a copy of the original response to the Notice of Missing Parts, and an explanation of the error on the part of the PTO that led to this case being allocated for abandonment. Applicants believe that this Petition was timely in light of the above-recited facts.

Acknowledgement of the active status of this application, and commencement of substantive examination of this application, are respectfully requested. If any additional information is required, it is requested that the undersigned be telephoned immediately.

Respectfully submitted,

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